

MEMORANDUM

Agenda Item No. 8(H)(2)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

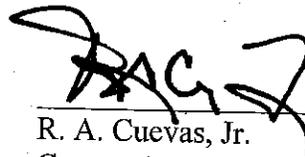
DATE: June 30, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving the amended and restated agreement between Miami-Dade County and the Parks Foundation of Miami-Dade, Inc., a not-for-profit corporation, and waiving requirements of Implementing Order 3-38 to allow County to reimburse the Foundation for recreational programming and marketing expenses in support of parks and parks programming through the Foundation up to annual budgeted amounts

A substitute was presented and forwarded to the BCC with a favorable recommendation as corrected at the 6-9-15 Unincorporated Municipal Service Area Committee. This item differs from the original version as stated in the Mayor's memorandum.

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.



R. A. Cuevas, Jr.
County Attorney

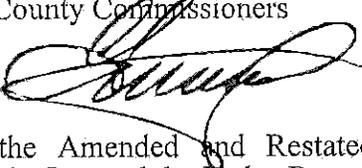
RAC/cp

Memorandum



Date: June 30, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving the Amended and Restated Agreement Between the Parks Foundation of Miami-Dade, Inc. and the Parks, Recreation and Open Spaces Department

This substitute differs from the original to: clarify in the Agreement that the Parks Foundation of Miami Dade, Inc.'s support of the Parks, Recreation and Open Spaces Department is supplemental to the County General Fund Support, and does not replace it; maintain the Parks and Open Spaces System Master Plan; provide that no Foundation acts shall in any manner alter the tax-exempt status currently in place for donations made or received; clarify that the Foundation's on-line presence is for donations and its membership programs; and correct minor scrivener's errors.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve an amended and restated agreement (Agreement) between the Parks Foundation of Miami-Dade, Inc. (Foundation) and the Miami-Dade Parks, Recreation and Open Spaces Department (Parks Department) to facilitate promotional and sponsorship opportunities and to reimburse the Foundation for certain recreational programming and marketing expenses in support of parks and parks programming, not to exceed the annual budgeted amounts. It is also recommended that this Board waive the requirements of Implementing Order 3-38, including the ISD Procurement Guidelines, in order to allow the County to reimburse the Foundation for promotional and marketing expenses.

Scope

The Foundation serves all Miami-Dade County, therefore the scope is countywide.

Fiscal Impact/Funding Source

This Agreement will have a positive fiscal impact through increased opportunities to leverage resources through the public-private partnership between the County and the Foundation. The long-term goal is to continue to enhance revenues and achieve cost efficiencies.

Track Record/Monitor

Nathalie Salas-Restrepo of the Parks Department's Marketing and Fundraising Division will manage the expenditures as part of its annual joint operating budget agreement with the Foundation.

Background

Resolution R-806-04, approved by the Board on June 22, 2004, authorized the Agreement between Miami-Dade County, through the Parks Department, and the Foundation, a not-for-profit corporation, formalizing a public-private partnership for fundraising and optimizing resources to preserve and improve parks and parks programs for the benefit of the residents of Miami-Dade County. To date, the Parks Foundation has raised over \$1.4 million in support of parks and parks programs.

The purpose of this Agreement (Attachment A) is to authorize the Foundation to allow the Parks Department to reimburse the Foundation for marketing and recreational programming expenses in support of parks and parks programming, in order to facilitate promotional and sponsorship opportunities, leverage resources, grow customers, increase donor opportunities and improve donor relations, resulting in enhanced revenues and cost efficiencies.

This Agreement benefits both parties because it will allow the Foundation to raise capital through donations due to the special treatment that 501(c) (3) designation extends to donors and sponsors. This will increase the partnership financial return, marketing resources, brand equity and social impact. Examples include cooperative advertising in both print and broadcast outlets, event sponsorships and innovative website and mobile application development for better leverage of evolving social media marketing opportunities. The term of the Agreement is extended for 30 years and will facilitate the fundraising mission of the Foundation to not only parks, but to other greenways, open spaces, and green thoroughfares which coincides with the mission and goals set forth in Miami-Dade County's Parks and Open Space System Master Plan approved by the Board in 2008.

On February 15, 2007, Articles of Amendment were filed with the Florida Department of State, Division of Corporations, changing the Parks Foundation, Inc. name to the Parks Foundation of Miami-Dade, Inc.

As precedent, this revision to the Agreement is similar in content and purpose to the approved resolution R-444-00 that authorizes an amendment the Operating Agreement between the Zoo Miami (formerly Miami Metrozoo) and the Zoological Society to enter into a similar agreement as the one requested under this memorandum.


Michael Spring, Senior Advisor
Office of the Mayor

Attachment



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(H)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(H)(2)

6-30-15

RESOLUTION NO. _____

RESOLUTION APPROVING THE AMENDED AND RESTATED AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE PARKS FOUNDATION OF MIAMI-DADE, INC. ("FOUNDATION"), A NOT-FOR-PROFIT CORPORATION, AND WAIVING REQUIREMENTS OF IMPLEMENTING ORDER 3-38 TO ALLOW COUNTY TO REIMBURSE THE FOUNDATION FOR RECREATIONAL PROGRAMMING AND MARKETING EXPENSES IN SUPPORT OF PARKS AND PARKS PROGRAMMING THROUGH THE FOUNDATION UP TO ANNUAL BUDGETED AMOUNTS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, the Parks Foundation of Miami-Dade, Inc. (the "Foundation") was established in 2004 for the primary purpose of serving as the fundraising arm of the Miami-Dade Parks, Recreation and Open Spaces Department ("Parks Department"); and

WHEREAS, in 2004, this Board approved, via Resolution No. R-806-04, an Agreement between the County and the Foundation in order to set forth the respective rights and responsibilities of the parties with respect to fundraising and promotions for the benefit of County parks; and

WHEREAS, over the past ten years, the Foundation and the Parks Department have worked collaboratively to optimize resources between them, coordinate efforts for the betterment of County parks and the County community, and to raise significant resources for the benefit of parks and park services and programs; and

WHEREAS, the County and the Foundation desire to amend and restate their Agreement at this time in order to expand the fundraising mission of the Foundation to not only parks, but to

other greenways, open spaces, and green thoroughfares which, in turn, coincides with the mission and goals set forth in Miami-Dade County's Parks and Open Space System Master Plan, to extend the term of the Agreement to thirty (30) years, and to make smaller revisions; and

WHEREAS, this Board further desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Amended and Restated Agreement between the County and the Foundation in substantially the form attached hereto as Attachment A and made a part thereof, waives the requirements of Implementing Order 3-38, including the ISD Procurement Guidelines, in order to allow the Parks Department to reimburse the Foundation for recreational programming and marketing expenses in support of parks and parks programming, not to exceed the budgeted allocation approved annually by the Board of County Commissioners, and authorizes the County Mayor or County Mayor's designee to execute the Agreement and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

GBK
JR

ATTACHMENT A

AMENDED AND RESTATED AGREEMENT BETWEEN
MIAMI-DADE COUNTY
AND THE PARKS FOUNDATION OF MIAMI-DADE, INC.

This Amended and Restated Agreement ("Agreement") is entered into the _____ day of _____, 2015 ("Effective Date") by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter the "County"), by and through the Miami-Dade County Parks, Recreation and Open Spaces Department (hereinafter the "Parks Department") and the Parks Foundation of Miami-Dade, Inc., a Florida not-for-profit corporation (hereinafter the "Foundation"), jointly referred to herein as the "Parties".

WHEREAS, pursuant to Resolution No. R-806-04, the Board of County Commissioners authorized the County Manager to execute an agreement ("Original Agreement") between the County and the Foundation in order to formalize a public-private partnership among the Parties for the betterment of County parks and the Parks Department; and

WHEREAS, the partnership by and between the Parties has allowed the Parties to optimize resources and to eliminate duplication of efforts in the conduct of their affairs in order to accomplish their separate and collective missions; and

WHEREAS, the Parties desire to amend and restate the Original Agreement among the Parties in its entirety in order to further clarify certain aspects of the relationship among the parties, allow the County to reimburse the Foundation for certain marketing and advertising expenses undertaken on behalf of and for the benefit of the County, and to expand the mission and fundraising of the Foundation to include not only parks, but also other greenways and open spaces,

NOW THEREFORE, in consideration of the mutual promises, obligations and covenants contained in this Agreement, the sufficiency which is hereby acknowledged, the County and the Foundation hereby agree as follows:

1. General Governing Principles

The parties agree that their relationship shall at all times be governed by the following general principles and recitals to which they subscribe:

- a. The Foundation is a not-for-profit corporation organized under the laws of the State of Florida. The primary purpose of the Foundation, as set forth in its Articles of Incorporation, is to serve as a fundraising arm of the Parks Department by, specifically,

providing financial support to aid the Parks Department in its capital improvements, preservation and restoration efforts, programs and services. The Foundation thereby agrees to exclusively direct its efforts and resources to the support of the Parks Department's mission, vision and goals. Notwithstanding the foregoing, to the extent that the Foundation receives any unsolicited donation for a specific recipient or project that is outside the purview of the Parks Department, then the Foundation may accept and utilize such donation for such specified purpose, provided that no additional funds or resources are required of the Foundation.

- b. The County, through the Department, owns, operates, manages and/or maintains parks, public gateways and throughways and other natural and open areas ("Parks") within Miami-Dade County, which are an invaluable County resources providing cultural, recreational, environmental and program services to our residents and visitors of all ages.
- c. In 2008 Miami-Dade County's Parks and Open Space System Master Plan (OSMP) was approved by the Board of County Commissioners by Resolution No. R-171-08. The vision of the OSMP is: Great Parks, Great Public Spaces, Great Natural and Cultural places, Great Streets, Great Greenways Trails and Water Trails. The guiding principles of the OSMP are Equity, Assess, Beauty, Multiple benefits, Seamlessness and Sustainability.
- d. The purpose of this Agreement is (1) to formalize a public-private partnership between the County and the Foundation for the support, conservation, preservation, restoration, enhancement and development of Parks, in accordance with the principles outlined in Miami-Dade County's Parks and Open Space System Master Plan, including cultural, recreational, environmental, aesthetic management and program services, and (2) to delineate the respective rights and responsibilities of the County and the Foundation to avoid misunderstandings or miscommunications, improve management, optimize resources, increase efficiencies and eliminate duplication of efforts in the conduct of their affairs so as to better accomplish their separate and collective missions to conserve, preserve, restore, enhance and improve Parks as well as the Parks Department and its programs for the benefit of the residents of Miami-Dade County.

- e. The Foundation shall be principally responsible for (1) the marketing, membership program, and promotion of the Foundation, (2) expanding educational and volunteer support, and (3) shall serve as the fundraising arm of the Parks Department.
- f. The County shall be responsible and accountable for overall operations of Parks. Nothing herein shall be deemed to limit the County's ability and authority to enter into agreement with other parties, be they public, private, for-profit or non-profit in order to advance the conservation, restoration, enhancement and development of Parks and the Parks Department's programs through the efforts and contributions of the private sector and other public organizations and agencies.
- g. The parties to this Agreement recognize that the Parks Department's success will be enhanced by mutual cooperation and support at all organizational levels within both the public and private sectors. The Parties agree to have their respective staffs assist each other to the fullest extent possible and reasonable for the benefit of the Parks.

2. Effectiveness and Term.

This Agreement amends and supersedes in its entirety the Original Agreement. This Agreement shall have a term of thirty (30) years and may be cancelled or terminated in accordance with the provisions set forth herein.

3. Contract Administrator.

The Director of the Miami-Dade County Parks, Recreation and Open Spaces Department (hereinafter the "Parks Director") or his or her designee shall act on behalf of the County in all matters pertaining to this Agreement and shall be the contract administrator of the Parks Department. The President of the Foundation (hereinafter the "Foundation President") or his or her designee shall be the contract administrator of the Foundation. The two contract administrators shall be authorized and directed by their respective parties to act on their behalf in administering and carrying out the provisions of this Agreement.

4. Mission Statement of the Foundation and Services to be Provided.

The Foundation shall serve as the fundraising arm of the Parks Department primarily for the endowment of capital projects, and recreational, educational, environmental and cultural community initiatives, as specifically approved by the County and the Foundation pursuant to the terms of this Agreement. Further, the Foundation shall serve as a fiscal agent for the Parks

Department with respect to grants and donations the receipt of which the Parks Department, as a department of the County (a political subdivision of the State of Florida), would be ineligible to receive directly. The Foundation shall provide the following services to the Parks Department:

- a. **Fundraising.** The Foundation shall be principally responsible for efforts to solicit corporate, foundation and individual donations of money or in-kind services or items ("Fundraising"). Fundraising shall be performed only for the following types of projects (collectively, the "Permitted Projects"): (1) capital improvement to the Parks, (2) acquisition of land and equipment for use in the Parks, (3) acquisition of temporary or permanent exhibitions, (4) acquisition of computer technology for primary use of Parks' patrons, (5) recreational, environmental, educational, or cultural programming in the Parks, (6) the Parks Department's natural areas management programs, and (7) aesthetics enhancements of throughways and gateways which support Miami-Dade County's Parks and Open Space System Master Plan. As set forth herein, the County and the Foundation shall approve the Permitted Projects. Fundraising shall comply with the Standards for Charity Accountability established by the Wise Giving Alliance that are applicable to private, non-profit fundraising groups, as well as the standards for Charitable Solicitations established by the Council for Better Business Bureaus that are applicable to private, non-profit fundraising groups. To avoid duplication, conflicts, and competing efforts, Fundraising shall be coordinated by the Foundation President, whose fundraising decisions may be modified by the Parks Director. Nothing herein shall be deemed to limit the rights and ability of the County to apply for any local, State, Federal or private grant for Parks and the Parks Department. To the extent necessary to fulfill the application requirements, the County will coordinate with the Foundation for grant applications. Likewise, the Foundation may apply for grants in conjunction with approval from the Parks Department.
- b. **Marketing.** This public-private partnership facilitates cross-marketing, promotional and sponsorship opportunities as between the Foundation and the County in order to leverage resources. The Foundation shall prepare and submit to the Parks Director, no later than September 1st of each calendar year, a comprehensive marketing plan for the promotion of The Parks Foundation along with Parks and events and services at Parks for the upcoming fiscal year which shall include the proposed expenditures for marketing in a proposed marketing budget. The proposed marketing plan and marketing budget of the

Foundation for Parks shall be subject to approval by the County, through the Parks Director, and may be amended from time to time with the approval of the Parks Director. The Foundation may thereafter undertake and purchase, on behalf of the County and only with the Parks Department's prior written approval in each instance, marketing and advertising activities and services for the Parks Department's programs and for Parks that are in conformance with the approved marketing plan and budget for that fiscal year. The Foundation shall provide the County with receipts, invoices and any other evidence reasonably requested by the County in order to document the marketing purchases and expenditures and the County shall reimburse the Foundation for these expenses on an annual basis.

- c. **Donor Relations.** The Foundation shall enhance the Foundation and the County's ability to grow customers, increase donor opportunities and improve donor relations utilizing multiple strategies and tactics. One such mechanism shall be the establishment of a donor recognition program, whereby the Foundation shall develop a means to thank and acknowledge donors and such program shall be subject to the prior approval of the Parks Department. Another mechanism for donor relations shall be the establishment of a Parks membership program that would provide certain admission, rental or other benefits to members while balancing the necessity of revenues to the Parks Department. Support of Parks Department through the Foundation is to supplement County General Fund Support, not to replace it. The Parks membership program shall likewise require prior approval by the Parks Department. No Foundation acts shall in any manner alter the tax exempt status currently in place for donations made and received.
- d. **Online Sales.** The Foundation shall maintain an online presence (via a website) that will accept donations to the Foundation.
- e. **Other Services.** Other services that the County and the Foundation may from time-to-time mutually agree to be in the best interests of Parks may be performed by the Foundation.
- f. **Fundraising Activities.** In the course of its primary mission to raise funds for the Permitted Projects and as specifically approved by the County and the Foundation, the Foundation may direct various Fundraising activities to the general public or targeted groups, including but not limited to lectures, concerts, receptions and dinners. The County acknowledges that these Fundraising events ultimately benefit Parks because they advance the Foundation's primary mission to raise funds for Permitted Projects. Accordingly, the Parties agree to the following:

1. To the extent allowed by Generally Accepted Accounting Principles, the Foundation may account for such activities as program activities for the limited purpose of ensuring that the Foundation's financial statements comply with Generally Accepted Accounting Principles;
2. Neither the value nor the cost of such activities shall be counted as part of the "contribution" to Parks pursuant to section 6(a) of this Agreement;
3. The cost of such activities shall be treated as Fundraising expenses and not as contributions for the purposes of complying with Standards for Charity Accountability pursuant to section 4(a) of this agreement; and
4. In the event a conflict were to appear between the subsections stated above, subsections 4(f)(2) and 4(f)(3) will govern over 4(f)(1).

5. Establishment of Account and Authorization for Expenditure.

- a. The County has established an account within the Parks Department Trust Account for the purpose of accepting cash donations from the Foundation and the County agrees to maintain such account. Said account shall be known as the "Parks Foundation Account," and shall bear its own, individual account codes, and shall accrue interest earned on the donations deposited therein. The County agrees that only donations from the Foundation will be deposited in the Parks Foundation Account.
- b. Expenditure of Parks Foundation Account funds shall be only for Permitted Projects agreed upon from time to time, as provided in Section 6(a), herein. Upon such agreement, the Parks Director and Foundation President shall draw upon the Parks Foundation Account only with the signature and approval of both, and only upon the submission of valid invoice(s) necessary for the execution of an approved Permitted Project.
- c. Notwithstanding the establishment of the Parks Foundation Account, the Foundation, in accordance with the regulations of all governing bodies, may establish its own, outside account for the purpose of accepting donations, grants and for the purpose of support for its Fundraising expenses. Nothing in this Agreement shall prohibit the use by the Foundation of private donations for its Fundraising expenses, so long as those Fundraising expenses, including but not limited to Fundraising expenses for Fundraising

activities contemplated by Section 4(f) herein, do not exceed 20% of the total raised by the Foundation in a given year.

6. Annual Giving.

a. Each year of this Agreement, as part of its annual budget, the Foundation shall make a contribution to the Parks Department, which shall consist of all funds not otherwise utilized for Fundraising expenses as set forth, and subject to the requirements of, Section 5(c); provided however, that funds that are provided to the Foundation for a specific recipient or project that is outside the purview of the Parks Department, then the Foundation may accept and utilize such donation for such specified purpose, so long as no additional funds or resources are required of the Foundation. This contribution shall be established pursuant to the following procedure:

1. The contribution shall be calculated by including all funds obtained by the Foundation that are spent for the benefit of Parks or are transferred into the Parks Foundation Account, as defined herein, for the benefit of Parks during the budget year at issue. The following shall qualify as contributions pursuant to this section: (a) Foundation-generated funds deposited into the Parks Foundation Account over and above any existing contribution or deposits, and any return on the Parks Foundation Account for the relevant period; and/or (b) any Foundation-generated funds not previously deposited into the Parks Foundation Account, and spent directly for the benefit of a Permitted Project.
2. If the Foundation makes its contribution pursuant to 6(a)(1), the Parks Director shall provide the Foundation with a list of specific, Permitted Projects, as defined herein, including approximate costs that reflect the needs of the Parks and from which the Foundation may choose for financial sponsorship. The purpose of this list is to allow the Foundation a meaningful choice of projects. All such projects must be consistent with the mission of the Parks Department.
3. The Parks Director will submit to the Foundation President this list of Permitted Projects, ranking them in order of priority, no later than

October 1st of each year. By mutual agreement, the Foundation President and the Parks Director will decide on which Permitted Project(s) will be funded (a) from the Parks Foundation Account and/or, (b) by Foundation-generated funds spent directly for the benefit of a Permitted Project(s). Such agreement will be reduced to writing, and once signed by the Foundation President and the Parks Director, will form part of this Agreement as if fully set forth herein.

- b. The parties recognize that distribution of the Foundation's resources will be consistent with the restrictions placed on those funds by their donors, or should the donor's restrictions not be honored, the funds shall be refunded to the donor. The donation by the Foundation to the County of goods or in-kind services shall be governed by the provisions of Miami-Dade County Administrative Order 1-3 and other relevant provisions of the Miami-Dade County Code.
- c. Notwithstanding the fact that many of the Foundation-generated funds deposited or to be deposited in the Parks Foundation Account originate from private donations, the expenditure of such funds on Permitted Projects shall be in strict conformity with the federal, state, and local rules and laws governing the expenditure of County funds.

7. Annual Report.

- a. Consistent with the national fundraising standards referred to in Section 4(a) and the requirements of Chapter 496 of the Florida Statutes, the Foundation shall provide the Parks Director an annual report that shall include:
 - 1. An explicit narrative description of the Foundation's major activities, in a form approved by the County;
 - 2. A list of Foundation board members and their addresses including some identifying information on each member;
 - 3. Audited financial statements complying with OMB Circular A-133;
 - 4. Form 990 including all attachments as filed with the Internal Revenue Service; and

5. Financial report form as filed with the Florida Department of Agriculture and Consumer Services, pursuant to the requirements of Florida Statutes section 496.407.

b. The Parks Director shall annually report to the Board of County Commissioners in writing on the Foundation's activities pursuant to this Agreement. The Parks Director's report may include recommendations, if any, for improvement or enhancement of the activities pursuant to this Agreement.

8. Inspection of Books and Records.

The County retains the right to inspect all invoices, contracts, materials, payroll information, ledgers, computer data and all other books, financial and other records of the Foundation relating to or in any way connected to this Agreement. All such books, records and information shall be made available in a timely manner to the County or its designee for inspection, audit or copying during reasonable business hours with notice. In addition, all such books, records and information shall be retained by the Foundation for a period of three years following the expiration or termination of this Agreement unless the County designates otherwise. In the event a claim, audit, investigation or any litigation in which the books, records and other information referenced above are determined by the County, in its sole discretion, to be relevant, the Foundation shall maintain and keep those records so designated to be relevant until such time as the County specifies otherwise. The County shall have the right at its cost and expense of monitoring and evaluating the activities undertaken by the Foundation pursuant to this Agreement, as determined by the County to be necessary. The Foundation shall have a right to inspect all final accounting records and other public records of the Parks Department.

9. Inspector General

The County's Inspector General (IG) has the right, but not the obligation, to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Foundation and the County in connection with this contract. Further, the County shall have the right but not the obligation to retain the services of an independent private sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Foundation and the County in connection with this contract. The audit and investigation undertaken by the IG, and/or the scope of services

performed by an IPSIG, may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

The IG and/or IPSIG may perform its services at all levels of the contracting and procurement process, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of Contractor, its officers, agents and employees, lobbyists, County staff and elected officials.

Upon written notice to the Foundation from the IG and/or an IPSIG, the Contractor shall make all requested records and documents available to the IG and/or IPSIG, as applicable, for inspection and copying. The IG and the IPSIG shall have the right to examine all documents and records in the Foundation's possession, custody or control which, in the IG and/or IPSIG's sole judgment, as applicable, pertain to performance of the contract, including, but not limited to, original estimate files; change order estimate files; worksheets; proposals and agreements from and with successful and unsuccessful subcontractors and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

The provisions in this section shall apply to the Foundation, its officers, agents and employees. The Foundation shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Foundation in connection with the performance of the contract.

Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Foundation or third parties.

10. Use of "Parks" Name.

The County has the right to the use of the "Miami-Dade County Park, Recreation and Open Spaces Department" name and all derivations thereof for all purposes and nothing in this Agreement shall be construed as modifying, limiting, diminishing, conditioning or extinguishing that right. The County does hereby consent to the limited use of the Miami-Dade County Parks,

Recreation and Open Spaces Department name by the Foundation for purposes consistent with this Agreement and with the County's prior approval, as pre-approved by the Parks Director or his/her designee.

11. Access and Use of the Miami-Dade County Parks Department Facilities.

- a. Office Space. The County shall provide to the Foundation office space within the Parks Department that the Foundation may use to carry out its responsibilities under this Agreement based upon the Parks Director's determination of the needs of Parks. The Foundation shall not pay any user fees or rent for that space but shall reimburse the County for all direct additional costs that result from the Foundation use of that space, including but not limited to, telephone, utility, and tenant-requested improvements of the space when such direct additional costs can be established.
- b. Events. The County may provide the Foundation with limited use of the Parks for the Foundation's events consistent with this Agreement, and upon such terms and conditions as the County determines in its sole and absolute discretion, subject to all governing laws, including but not limited to Miami Dade County Code Section 2-1, Rule 9.04 and any other applicable County rules and regulations. In accordance with Administrative Order 8-3, the Foundation may engage in Fundraising special events at Parks facilities on an ad hoc basis with approval of the funding and management terms of such events to be determined by the Parks Director and the Foundation Director. The County and Foundation agree that the Parks Department may charge the Foundation for the actual cost of County staff and equipment provided for Foundation events or programs.

12. Assets.

All assets, personal property, or real property that are acquired pursuant to this Agreement by the Foundation for Parks shall be held by the Foundation solely for the use and benefit of the Parks. In the event this Agreement is canceled or is not renewed or in the event the Foundation dissolves, the Foundation shall transfer title to all it is the responsibility of the Foundation prior to any dissolution to ensure that these assets are preserved and used for the exclusive benefit of the Parks.

13. Cancellation, and Renewal.

This Agreement may be canceled by either party for any reason or no reason whatsoever upon thirty (30) days written notice to the other party.

In the event the Foundation dissolves, the Foundation shall provide written notice to the Parks Director sixty (60) days prior to said dissolution.

14. Insurance.

- a. Minimum Insurance Requirements: Certificates of Insurance. The Foundation shall furnish to the County, c/o Department of General Services Administration, Risk Management Division, 111 NW 1 Street, Miami, FL 33128 Certificate (s) of Insurance indicating coverage has been obtained which meets the requirements as outlined below:
- Worker's Compensation Insurance for all Foundation employees, if any, as required by Sec. 440, Florida Statutes.
 - Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
 - Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount-not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- b. Modification and Changes. The Foundation shall notify the County of any intended changes in insurance coverage, including but not limited to any renewals of existing insurance policies. Upon review of the Agreement by the County's Risk Management Division, the County may increase, decrease, waive or modify any of the aforementioned insurance requirements. Any request by the Foundation to decrease, waive or modify any of the aforementioned insurance requirements must be approved in writing by the County's Risk Management Division.
- c. Classifications and Ratings. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals. All insurance policies required above shall be issued by companies authorized to business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B: as to management, and no less than "Class V: as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance shall indicate that no modification or change in insurance shall be made without thirty (30) days written advance to the certificate holder.

15. General Provisions.

During the term of this Agreement, the following provisions shall apply:

- a. Neither the County nor the Foundation may transfer in any fashion all or any part of its respective rights or obligations under this Agreement to a third party unless authorized in writing and agreed to by both Parties;
- b. The County and the Foundation shall obey all laws, statutes, ordinances, codes, rules and regulations of all governmental entities with appropriate authority and jurisdiction;
- c. The Foundation shall indemnify and save the County harmless from any and all claims, liability, losses, and causes of action, which may arise out of the negligent, reckless, or intentional acts of the Foundation, its agents (including volunteers) and employees in performance under this Agreement. The Foundation directly or through its insurance carrier shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all such suits, in the name of the County when applicable, and shall pay all costs and judgments which may issue thereon. To the extent allowed and subject to the monetary and other limitations set forth in Section 768.28, Florida Statutes, the County shall indemnify and save the Foundation harmless from any and all claims, liability, losses and causes of action that may arise out of the negligent acts of the County, its agents and employees, in performance under this Agreement. The County directly or through its insurance carrier shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the Foundation when applicable, and shall pay all costs and judgments which may issue

thereon. It is expressly recognized that the insurance requirements of this Agreement do not limit a party's responsibility to indemnify another party under this provision.

- d. No indulgence, consent to, or waiver of any breach of any provision of this Agreement by either party shall be construed as a consent to or waiver of any other breach of the same or any other provision of this Agreement unless specifically acknowledged in writing by both Parties.
- e. The occurrence of any non-performance of an action required hereunder, or the performance of any action contrary to the terms of this Agreement shall constitute a default of this Agreement.
- f. Upon notice of default by either party, the party receiving such notice shall immediately cure or, if such default cannot be immediately cured, commence to cure the default, if such default exists. Failure to cure a default immediately or failure to commence and diligently pursue cure to a timely conclusion, shall be adequate grounds for immediate termination of this Agreement without providing the prior thirty (30) day notice.
- g. Any notice, request, demand, instruction or other communication to be given to any party hereunder, shall be in writing and shall either be (i) hand-delivered, (ii) sent by Federal Express or a comparable over-night mail service; or (iii) sent by confirmed telephone facsimile transmission provided that an original copy of the transmission shall be mailed by first-class U.S. Mail to the following parties at their respective addresses. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The names and addresses for the purpose of this paragraph may be changed by giving notice. Unless or until such written notice is received, that last addressee and address stated below shall be deemed to continue in effect for all purposes hereunder.

For the Foundation: Foundation President
Parks Foundation of Miami-Dade, Inc.
275 Northwest 2nd Street
Miami, FL 33128

For the County: Parks Director
Parks, Recreation and Open Spaces Department
275 Northwest 2nd Street
Miami, FL 33128

Copy: County Mayor
Miami-Dade County
111 NW 1 Street, Suite 2900
Miami, Florida 33128

Or to such other addresses as may be designated in writing. Courtesy copies of notices shall be sent to the additional parties as may be requested in writing by the Foundation or the County;

- h. Where any approval is required, such approval shall not be unreasonably withheld or unduly delayed.
- i. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- j. In the event that one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. Further, in the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable by virtue of its scope, but may be made valid, legal or enforceable by limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it valid, legal or enforceable under the laws of the jurisdiction in which validity, legality, or enforceability is sought.
- k. This Agreement together with any exhibits or attachments constitutes the entire Agreement between the Foundation and the County and may not be changed or amended except in writing as provided in this Agreement or as duly approved by the Miami-Dade County Board of County Commissioners, and signed by the parties.
- l. Autonomy. All parties agree that this agreement recognizes the autonomy of the contracting parties. Specifically, it is expressly understood that and intended that the Foundation is not an agency or instrumentality of the County. In addition, the Foundation's agents or employees are not agents or employees of the County. At no time during the performance of this Agreement shall the Foundation's agents, including but not limited to volunteers and employees, give the appearance that they are agents of the County nor shall they be construed to be actual agents of the County.
- m. Neither party may unilaterally amend this agreement.

16. Sovereign Rights.

(1) Sovereign Rights. It is expressly understood that notwithstanding any provisions of this Agreement and the County's status as a Party to this Agreement,

(a) the County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under Florida law and shall in no way be estopped from or be liable for withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature, which laws or regulations are or might be applicable to the planning, design, construction, development, or operation of any project on Parks;

(b) the County shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development, or operation of any project on Parks; and

(c) notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Department of Regulatory and Economic Resources, DERM, or their successor entities, or any other County, Federal or State department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

IN WITNESS WHEREOF, the parties set their hands and seal of approval.

ATTEST:

MIAMI-DADE COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

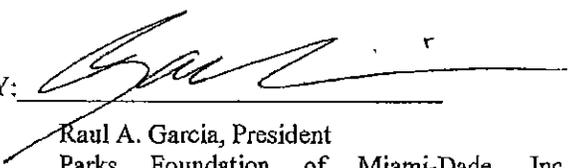
HARVEY RUVIN, CLERK

BY: _____

BY: _____

Carlos A. Gimenez, Mayor
Miami-Dade County

BY: _____

BY:  _____

Raul A. Garcia, President
Parks Foundation of Miami-Dade, Inc.,
a Florida not-for-profit corporation

Approved for Legal Sufficiency: _____